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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,970	01/28/2002	Robert A. Blakley	87335.3520	6698
30734	7590	10/06/2003	EXAMINER	
BAKER + HOSTETLER LLP WASHINGTON SQUARE, SUITE 1100 1050 CONNECTICUT AVE. N.W. WASHINGTON, DC 20036-5304			SORKIN, DAVID L	
			ART UNIT	PAPER NUMBER
			1723	

DATE MAILED: 10/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/055,970	Applicant(s) BLAKLEY ET AL.	
	Examiner David L. Sorkin	Art Unit 1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 March 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>06/25/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings filed 13 March 2002 are objected to for the following reasons:
2. The drawings fail to comply with 37 CFR 1.84(p)(4) because reference character "38" has been used to designate both the biasing means and a bolt. See Figs. 1 and 2.
3. In Figs. 1 and 2 reference character "24" must be underlined to comply with 37 CFR 1.84(q).
4. To comply with 37 CFR 1.84(q), in Fig. 6 reference character "200" must be provided with a lead line instead of being underlined.
5. In Fig. 1, O-rings 43 and 44 must be located in movable element 26 rather than in collar 20 and protrusion 18, to be consistent with the originally filed drawings, paragraph [0038] of the specification, and paragraphs [0018] and [0019] which state that Fig. 2 is the same structure as Fig. 1, but in a shutoff position.
6. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

7. The specification uses reference character "38" to refer to both the biasing means and a bolt. Different characters should be used for these parts. See for example, line 6 of paragraph [29], line 4 of paragraph [34] and line 15 of paragraph [41].
8. In line 8 of paragraph [68], "whils" should read - - while - -, or - - whiles - -.

Claim Rejections - 35 USC § 112

9. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

10. Claims 19 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In line 4 of claim 19, there is lack of antecedent basis for "the first sealing means". It is unclear if this phrase is meant to refer to the "stopping means" or if it is a recitation of an additional element.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1-4 and 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by AU 41984/85. Note: in independent claim 1 it is considered that the vessel, recited in the phrase "for use with a vessel" is not positively recited as part of the claimed structure, because it is only recited in a preamble statement of intended use. However, it is considered that the "shaft" is positively recited as part of the claimed structure because structural relationships of parts to shaft are recited, such as "a collar connected to the shaft". Regarding claim 1, AU 41984/85 discloses a seal shutoff apparatus for use with a vessel having a shaft (12) extending through the vessel (see page 5, lines

Art Unit: 1723

11-13), wherein the shaft translates between an operating position (depicted in Figs. 1, 2a and 3a) and a shutoff position (depicted in Figs. 2b and 3b), the apparatus comprising a collar (38,40) connected to the shaft such that it translates with the shaft (see page 6, lines 3-5; Figs. 2a,2b,3a,3b); a stop assembly comprising a first contact surface (the lower surface of 62 including O-ring 58, see Fig. 3b) and second contact surface (a surface of 16 and associated O-rings, see Figs. 1, 3a), and a sealing mechanism (including O-ring 58). Regarding claim 2, the sealing mechanism (58) is integral with the stop assembly, such that the first contact surface together with the collar form a seal when the shaft is in the shutoff position (see Fig. 3b). Regarding claim 3, the stop assembly comprises a first component (62) attached to a second component (16) (see Fig. 3a), the first component comprises the first contact surface and the second component comprises that second contact surface (see Fig. 3a). Regarding claim 4, the sealing mechanism further comprises O-rings (See Figs. 3a and 3b). Regarding claim 16, AU 41984/85 discloses a method for providing a sealing engagement between a vessel and a rotatable shaft (12) (see page 3, lines 2-5) comprising providing a seal shutoff apparatus having a collar (38 or alternatively the collar shown in Figs. 1 and 3a which rests upon 16) connected to the shaft such that the collar translates with the shaft, a stop assembly comprising a first and second contact surfaces (the lower surface of 62 including O-ring 58; and a surface of 16 and associated O-rings, respectively or visa versa), wherein the first and second contact surfaces constrain translational movement of the collar, and a sealing mechanism (including the aforementioned O-rings) and translating the collar in a first direction

Art Unit: 1723

(either from the position of Fig. 3a to position 3b or from position 3b to position 3a) such that the first contact surface together with the collar form a seal (either at 58 upon going from 3a to 3b with 38 being "the collar"; or at 16 upon going from 3b to 3a, with the collar shown in Figs. 1 and 3a which rests upon 16 being "the collar"). Regarding claim 17, considering 38 to be "the collar", the first direction is upwards (see page 7, line 6, "raised"; Fig. 3a. vs. 3b). Regarding claim 18, considering the collar shown in Figs. 1 and 3a which rests upon 16 to be "the collar", the first direction is downward (see page 7, line 6, "raised"; Fig. 3a. vs. 3b).

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Art Unit: 1723

15. Claims 5-8, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over AU 41984/85. The apparatus of AU 41984/85 was discussed above with regard to claim 1. Regarding claim 5, AU 41984/85 further discloses a floating flushing bushing (32) and a flushing vent (76), the bushing being operatively connected to the apparatus (see Fig. 1). While the reference does not explicitly state that the bushing is "for tracking radial shaft deflection", it is considered that it would be capable of such a function because it is movable mounted about the shaft on a spring (36). The reference fails to quantify the clearance of the bushing. It is considered that it would have been obvious to one of ordinary skill in that art to have provided the bearing with a clearance within the claimed range because the instant specification admits that such a bearing is "standard" (see paragraphs [51] and [52]) and because the Federal Circuit held in *Gardner v. TEC Systems, Inc.* 220 USPQ 777 that where the only difference between the prior art and the claims is a recitation of dimensions and a device having the claimed dimensions would not perform differently from the prior art, the claimed device is not patentably distinct from the prior art device. Regarding claims 6 and 7, the reference does not quantify the distance which the collar translates. However, it is considered that it would have been obvious to one of ordinary skill in the art to have made the apparatus such that the range of translation is as claimed because the Federal Circuit held in *Gardner v. TEC Systems, Inc.* 220 USPQ 777 that where the only difference between the prior art and the claims is a recitation of dimensions and a device having the claimed dimensions would not perform differently from the prior art, the claimed device is not patentably distinct from the prior art device. Regarding claim

8, the first direction is upward and the second direction is downward (see page 7, line 6, "raised"; Fig. 2a vs. 2b. and Fig. 3a. vs. 3b). Note: in independent claim 19 it is considered that the vessel, recited in the phrase "for use with a vessel" is not positively recited as part of the claimed structure, because it is only recited in a preamble statement of intended use. However, it is considered that the "shaft" is positively recited as part of the claimed structure because structural relationships of parts to shaft are recited, such as "a first stop means connected to the shaft". Regarding claim 19, AU 41984/85 discloses an apparatus for use with a vessel having a housing (20,10), wherein the shaft translates at least between an operating position operating position (depicted in Figs. 1, 2a and 3a) and a shutoff position (depicted in Figs. 2b and 3b), the apparatus comprising a first stopping means (38) connected to the shaft such that the first stopping means translates with the shaft; and a second stopping means (16,58,62) disposed within the housing wherein the first stopping means together with the second stopping means constrain translational movement of the shaft (see Figs. 3a and 3b). The reference does not quantify the distance which the collar translates. However, it is considered that it would have been obvious to one of ordinary skill in the art to have made the apparatus such that the range of translation is as claimed because the Federal Circuit held in *Gardner v. TEC Systems, Inc.* 220 USPQ 777 that where the only difference between the prior art and the claims is a recitation of dimensions and a device having the claimed dimensions would not perform differently from the prior art, the claimed device is not patentably distinct from the prior art device. Regarding claim

Art Unit: 1723

20, the first stopping means sealingly engages the second stopping means (at O-ring 58) when the shaft is in the shutoff position (see Fig. 3b).

16. Claims 9-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over AU 41984/85 in view of Brunson et al. (US 6,193,409). Regarding claim 9, AU 41984/85 discloses a mixing apparatus for mixing and processing materials comprising a mixing vessel (see page 5 lines 11-13); a rotatable shaft (12) extending through the mixing vessel (see page 5, lines 11-13), a sealing element for providing a primary seal engagement between the vessel and the rotating shaft (see page 5, lines 16-19) and an apparatus for providing secondary sealing engagement between the vessel and the rotatable shaft wherein the shaft translates between an operating position (depicted in Figs. 1, 2a and 3a) and a shutoff position (depicted in Figs. 2b and 3b), the apparatus comprising a collar (38,40) connected to the shaft such that it translates with the shaft (see page 6, lines 3-5; Figs. 2a,2b,3a,3b); a stop assembly comprising a first contact surface (the lower surface of 62 including O-ring 58, see Fig. 3b) and second contact surface (a surface of 16 and associated O-rings, see Figs. 1, 3a), and a sealing mechanism (including O-ring 58). AU 41984/85 does not explicitly state that the apparatus comprises a motor and that the shaft extends from the motor. Brunson ('409) teaches a mixing apparatus having a motor (50) and a shaft (54) extending from the motor into a mixing vessel (34). It is considered that it would have been obvious to one of ordinary skill in the art to have provided the apparatus of AU 41984/85 with a motor such that the shaft extends from the motor into the vessel, because AU 41984/85 states that the shaft is "suitably mounted and driven" on page 5, line 15 and because Brunson

Art Unit: 1723

('409) teaches that a motor and a shaft extending from the motor into a mixing vessel is a "typical" arrangement in the art (see col. 4, lines 1-4). Regarding claim 10, the sealing mechanism (58) is integral with the stop assembly, such that the first contact surface together with the collar form a seal when the shaft is in the shutoff position (see Fig. 3b). Regarding claim 11, the stop assembly comprises a first component (62) attached to a second component (16) (see Fig. 3a), the first component comprises the first contact surface and the second component comprises that second contact surface (see Fig. 3a). Regarding claim 12, the sealing mechanism further comprises O-rings (See Figs. 3a and 3b). Regarding claim 13, AU 41984/85 further discloses a floating flushing bushing (32) and a flushing vent (76), the bushing being operatively connected to the apparatus (see Fig. 1). While the reference does not explicitly state that the bushing is "for tracking radial shaft deflection", it is considered that it would be capable of such a function because it is movable mounted about the shaft on a spring (36). AU 41984/85 fails to quantify the clearance of the bushing. It is considered that it would have been obvious to one of ordinary skill in that art to have provided the bearing with a clearance within the claimed range because the instant specification admits that such a bearing is "standard" (see paragraphs [51] and [52]) and because the Federal Circuit held in *Gardner v. TEC Systems, Inc.* 220 USPQ 777 that where the only difference between the prior art and the claims is a recitation of dimensions and a device having the claimed dimensions would not perform differently from the prior art, the claimed device is not patentably distinct from the prior art device. Regarding claim 14, AU 41984/85 does not quantify the distance which the collar translates. However, it is considered

Art Unit: 1723

that it would have been obvious to one of ordinary skill in the art to have made the apparatus such that the range of translation is as claimed because the Federal Circuit held in *Gardner v. TEC Systems, Inc.* 220 USPQ 777 that where the only difference between the prior art and the claims is a recitation of dimensions and a device having the claimed dimensions would not perform differently from the prior art, the claimed device is not patentably distinct from the prior art device. Regarding claim 15, the first direction is upward and the second direction is downward (see page 7, line 6, "raised"; Fig. 2a vs. 2b. and Fig. 3a. vs. 3b).


Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 703-308-1121. The examiner can normally be reached on 8:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 703-308-0457. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



David Sorkin